

1 Daniel D. White, Esq.
2 California Bar No. 119030
3 23 Corporate Plaza Drive, Suite 160
4 Newport Beach, CA 92660
5 Telephone: (949) 729-9119
6 Facsimile: (949) 729-9174
7 E-mail: dan@ddwlaw.com

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8 Stephens, Gourley & Bywater
9 R. Vaughn Gourley, Esq.
10 David A. Stephens, Esq.
11 3636 North Rancho Drive
12 Las Vegas, Nevada 89130
13 Telephone: 702-656-2355
14 Facsimile: 702-656-2776
15 E-mail: vgourley@1vcm.com

16 **UNITED STATES BANKRUPTCY COURT
17 FOR THE DISTRICT OF NEVADA**

18 **In re:**

19 **USA COMMERCIAL MORTGAGE COMPANY,**
20 **Debtor.**

21 **CASE NOS: BK-5-06-10726 LBR**
CASE NOS: BK-5-06-10727 LBR
CASE NOS. BK-5-06-10728 LBR
CASE NOS. BK-5-06-10729 LBR
CHAPTER 11
JOINTLY ADMINISTERED
UNDER
CASE NO. BK-5-06-10725-LBR

22 **In re:**

23 **USA CAPITAL REALTY ADVISORS, LLC,**
24 **Debtor.**

25 **In re:**

26 **USA CAPITAL DIVERSIFIED TRUST DEED FUND,**
27 **LLC,**
28 **Debtor.**

29 **In re:**

30 **USA SECURITIES, LLC,**
31 **Debtor.**

32 **Affects:**

33 All Debtors
34 USA Commercial Mortgage Co.
35 USA Securities, LLC
36 USA Capital Realty Advisors, LLC
37 USA Capital Diversified Trust Deed
38 USA First Trust Deed Fund, LLC

39 **OPPOSITION TO USA**
COMMERCIAL MORTGAGE
COMPANY'S OBJECTION TO
PROOF OF CLAIM NO. 155
FILED BY GATEWAY STONE
ASSOCIATES, LLC

1
2 USA COMMERCIAL MORTGAGE COMPANY /

3 Plaintiff,

4 vs.

5 GATEWAY STONE ASSOCIATES, LLC, a Delaware
6 limited liability company,

7 Defendant.

8
9
10 Defendant, Gateway Stone Associates, LLC (“Gateway”), by and through its counsel,
11 Law Office of Daniel D. White and Stephens, Gourley & Bywater, hereby opposes to USA
12 Commercial Mortgage Company’s (“USACM”) Objection to Claim No. 155 filed by Gateway,
13 and states as follows:

14

- 15 1. USACM alleges that it has no liability to Gateway’s Claim because Gateway
16 allegedly defaulted on the Loan Agreement before any breach by USACM. However,
17 this argument is without merit.
- 18 2. Pursuant to the Loan Agreement, USACM was obligated to disburse monthly
19 payments to Gateway according to a specified Disbursement Schedule that was
20 attached as Exhibit “B” to the Loan Agreement. (See, Disbursement Schedule
21 attached hereto as Exhibit “1.”)
- 22 3. As shown by the Disbursement Schedule, the monthly disbursements made from
23 USACM to Gateway were intended to cover both interest and draws. Therefore, the
24 disbursements themselves were intended to cover interest payments to USACM.
- 25 4. USACM only made a couple of the disbursements set forth in the Disbursement
26 Schedule before completely ceasing to disburse funds to Gateway. When USACM

1 ceased making the scheduled disbursements to Gateway, USACM itself stopped the
2 funding of interest payments.

3 5. Therefore, USACM's own breach of failure to make the scheduled disbursements
4 pursuant to the Disbursement Schedule caused the interruption of interest payments.
5
6 In other words, USACM itself caused the "default" alleged in USACM's Objection to
7 Claim No. 155 filed by Gateway by its own default for failure to make the scheduled
8 disbursements.
9
10 6. As such, USACM's argument is without merit and should not be considered. For the
11 reasons set forth herein, Gateway respectfully requests that the Court deny USACM's
12 request for an order sustaining this Objection and allow Claim No. 155 filed by
13 Gateway. Gateways also requests that the Court grant such other and further relief as
14 it deems just and proper.

15 Respectfully submitted this 27th day of December, 2006.
16

17
18 /s/ Daniel D. White, Esq.

19 Daniel D. White, Esq.

20 Counsel for Gateway Stone
21 Associates, LLC
22
23 \elvis\-\Client-\Stone Pacific\USA Capital BK\USA Comm Litigation\Opp to Objection to Proof of Claim.doc
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25
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27
28

Exhibit “1”

EXHIBIT "B"

DISBURSEMENT SCHEDULE

All advances after the closing are subject to Section 3.2 of the Loan Agreement. Month "X" means "X" months after closing.

<u>MONTH</u>	<u>TOTAL</u>	<u>INTEREST</u>	<u>DRAWS*</u>
Close	\$12,600,000	\$312,350	\$12,287,650
Month 1			
Month 2			
Month 3	\$ 228,712	\$ 131,000	\$ 97,712
Month 4	\$ 230,712	\$ 133,000	\$ 97,712
Month 5	\$ 232,712	\$ 135,000	\$ 97,712
Month 6	\$ 1,235,712	\$ 138,000	\$1,097,000**
Month 7	\$ 247,712	\$ 150,000	\$ 97,712
Month 8	\$ 252,712	\$ 155,000	\$ 97,712
Month 9	\$ 254,712	\$ 157,000	\$ 97,712
Month 10	\$ 256,712	\$ 159,000	\$ 97,712
Month 11	\$ 259,712	\$ 162,000	\$ 97,712
Month 12	<u>\$ 430,592</u>	<u>\$ 352,650</u>	<u>\$ 77,942</u>
Total	\$16,230,000	\$1,985,000	\$14,245,000

*Draws include \$85,000 for Borrower's Overhead and Management related to the Entitlements for the Property.

**Draw to Borrower of \$1,000,000 to Borrower upon receipt of written verification of Tentative Map approval and expiration of CEQA challenge period (and/or) upon verification and Lenders' satisfaction that all rights to develop the Property (in the form represented to Lender) are proposed, vested and irrevocable.

All draws subject to the additional requirements and continued obligations under the Loan Agreement.